IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA18-1180

Filed: 18 June 2019

Iredell County, Nos. 15 JT 105-07

IN THE MATTER OF: M.Y.-F.H., Y.K.-M.A., K.J.Y.H.

Appeal by respondent from orders entered 27 August 2018 by Judge Deborah Brown in Iredell County District Court. Heard in the Court of Appeals 30 May 2019.

Lauren Vaughan for petitioner-appellee Iredell County Department of Social Services.

Mercedes O. Chut for respondent-appellant mother.

Smith, Anderson, Blount, Dorsett, Mitchell & Jernigan, L.L.P., by Michael W. Mitchell, for guardian ad litem.

BERGER, Judge.

Respondent, the mother of the juveniles M.Y.-F.H. ("Meghan")[1], Y.K.-M.A. ("Vince"), and K.J.Y.H. ("Kaitlyn"), appeals from orders terminating her parental rights. After careful review, we affirm the trial court's orders.

Factual and Procedural Background

[1] Pseudonyms are used to protect the identities of the juveniles and for ease of reading. *See* N.C.R. App. P. 3.1(b).

The evidence tended to show that on June 18, 2015, the Iredell County Department of Social Services ("DSS") filed petitions alleging that Meghan, Vince, and Kaitlyn were neglected and dependent juveniles. DSS alleged that on June 12, 2015, Respondent attempted to give her children to Salisbury police. Police responded that if she left the children, she would be charged with abandonment.

Respondent then took the children to meet paternal family relatives at a local mall. When the relatives were not at the location, Respondent became belligerent. Respondent sat down in the middle of the mall, "cussed" at everyone, and refused to leave. Respondent insisted that someone take the children. According to mall staff, Respondent repeatedly slapped one of her children in the face and carried one of her children upside down by the leg. Mall staff also reported that Respondent left one of her children alone in her car. Respondent then went back to the car to get the child while leaving her two other children in the mall screaming and unattended. Respondent stated to the child who had been left alone in the car, "I hate you," and hit the child in the head.

Respondent then went to the paternal grandparents' home and took thirty to eighty Clonipins. Respondent was admitted to Novant Health Rowan Medical Center, and the paternal grandparents kept the children temporarily.

DSS further alleged in the petition that on June 17, 2015, Respondent appeared at DSS along with Vince and Kaitlyn. Vince and Kaitlyn's clothing were

dirty, both children emitted an odor, and their diapers appeared to be soaked with urine and filled with feces.

DSS involvement with this family began in Michigan in 2003. Iredell County DSS began working with Respondent in February 2010 after receiving Child Protective Services ("CPS") reports claiming the children were being neglected due to drug use, improper supervision, injurious environment, and improper care. DSS stated that Respondent is reportedly diagnosed with bipolar disorder, depression, and epilepsy, and is currently prescribed Clonipin, Prozac, and Kepera.

Respondent further reported to DSS that she was receiving disability because she burned down a house belonging to one of her children's fathers. DSS alleged that during the June 17, 2015 meeting with Respondent, she "exhibited erratic and strange behaviors." DSS further alleged that Respondent has a long history of untreated mental health issues, refuses to take her medications, and has previously attempted suicide and threatened to kill herself and the children on several occasions.

Respondent admitted to a history of domestic violence, sexual molestation, and the need for assistance. DSS further stated that there had been reports that Respondent had been physically and verbally abusive towards the children. Finally, DSS noted the family's long history of instability, including moving from place-to-place and state-to-state. DSS obtained non-secure custody of the juveniles, and on August 11, 2015, the trial court adjudicated the juveniles neglected and dependent.

DSS subsequently filed petitions alleging that grounds existed to terminate Respondent's parental rights pursuant to N.C. Gen. Stat. § 7B-1111(a)(1), (2), (3), and (6). Hearing on the petitions was held on August 3, 2018. At the beginning of the hearing, Respondent's counsel moved to continue the hearing when Respondent did not appear. Counsel stated that Respondent had been "adamant" that she was going to attend the hearing when they last spoke in May 2018, but he had not spoken with her since that time. The trial court denied the motion.

On August 27, 2018, for each child, the trial court entered a consolidated judgement and order terminating Respondent's parental rights. The trial court determined that grounds for termination of parental rights existed and that it was in the juveniles' best interests that Respondent's parental rights be terminated. Respondent filed timely notice of appeal from the trial court's order.[2]

Analysis

Respondent argues the trial court abused its discretion by failing to conduct an inquiry prior to the beginning of the termination hearing to determine whether a guardian ad litem should be appointed to represent her. Respondent contends that all of the evidence points to her lack of capacity, there is no evidence that she is competent, and there was no rational basis for the trial court's failure to hold a competency hearing. We disagree.

[2] The trial court also terminated the father's parental rights, but he does not appeal from the trial court's order and is not a party to this appeal.

"On motion of any party or on the court's own motion, the court may appoint a guardian ad litem for a parent who is incompetent in accordance with G.S. 1A-1, Rule 17." N.C. Gen. Stat. § 7B-1101.1(c) (2017). An incompetent adult is defined as one:

> [W]ho lacks sufficient capacity to manage the adult's own affairs or to make or communicate important decisions concerning the adult's person, family, or property whether the lack of capacity is due to mental illness, mental retardation, epilepsy, cerebral palsy, autism, inebriety, senility, disease, injury, or similar cause or condition.

N.C. Gen. Stat. § 35A-1101(7) (2017). This Court has stated that "[a] trial judge has a duty to properly inquire into the competency of a litigant in a civil trial or proceeding when circumstances are brought to the judge's attention, which raise a substantial question as to whether the litigant is *non compos mentis*." *In re J.A.A. & S.A.A.*, 175 N.C. App. 66, 72, 623 S.E.2d 45, 49 (2005). "[T]rial court decisions concerning both the appointment of a guardian *ad litem* and the extent to which an inquiry concerning a parent's competence should be conducted are reviewed on appeal using an abuse of discretion standard." *In re T.L.H.*, 368 N.C. 101, 107, 772 S.E.2d 451, 455 (2015) (citation omitted).

In *T.L.H.*, the Supreme Court held the following:

> [W]hen the record contains an appreciable amount of evidence tending to show that the litigant whose mental condition is at issue is not incompetent, the trial court should not, except in the most extreme instances, be held on appeal to have abused its discretion by failing to inquire into that litigant's competence.

Id. at 108-09, 772 S.E.2d at 456. Further, this Court should afford substantial deference to the trial court

> given that the trial judge, unlike the members of a reviewing court, actually interacts with the litigant whose competence is alleged to be in question and has, for that reason, a much better basis for assessing the litigant's mental condition than that available to the members of an appellate court, who are limited to reviewing a cold, written record.

See id. at 108, 772 S.E.2d at 456.

Respondent was diagnosed with several psychological disorders, including borderline personality disorder, post-traumatic stress disorder, cannabis use disorder, major depressive disorder, and bipolar disorder. However, "evidence of mental health problems is not per se evidence of incompetence to participate in legal proceedings." *In re J.R.W.*, 237 N.C. App. 229, 234, 765 S.E.2d 116, 120 (2014). Particularly when, as in this matter, a thorough review of the record reveals "an appreciable amount of evidence tending to show that [Respondent] . . . is not incompetent[.]" *T.L.H.*, 368 N.C. at 109, 772 S.E.2d at 456.

Respondent appeared before the judge who presided over the termination proceeding throughout this case, and despite Respondent's psychological issues, Respondent's behavior before the trial court never provoked sufficient concern to cause her attorney to seek a competency hearing, nor did the trial court conduct one on its own motion. Moreover, we note the trial court granted Respondent visitation with the juveniles after the cessation of reunification efforts.

The record also indicated that Respondent accessed and participated in social services in both Michigan and North Carolina; was able make travel arrangements and travel back and forth between Michigan and North Carolina; entered into a case plan with DSS; attended supervised visitation with the juveniles consistently in 2017; attended parenting classes; completed a parental fitness evaluation; applied for public housing and entered into a payment plan to satisfy a past due amount with the housing agency; applied for Medicaid; and was prescribed medication by her therapist and was in compliance with her medication management. In sum, the record reveals that Respondent's conditions did not render her incapable of managing or understanding her affairs. Consequently, we are unable to conclude that the trial court abused its discretion by not conducting a guardian ad litem inquiry.

Respondent also challenges findings of fact numbers 5, 18, 19 and 20 on appeal. In finding of fact number 5, the trial court determined that Respondent "elected not to be present" at the termination hearing, and argues that her failure to appear at the hearing suggests she did not understand the nature of the proceedings. There was ample evidence in the record to support this finding, including testimony from Social Worker Cassie Killian ("Killian"). Killian testified that she discussed the court date and purpose of the hearing in a phone call from Respondent on August 2, 2018. Killian did not suggest Respondent failed to understand or was unable to comprehend

the nature or purpose of the proceedings, or the timing thereof. Finding of fact number 5 was supported by competent evidence.

Findings of fact numbers 18, 19, and 20 all relate to services and treatments available to Respondent and the trial court's determination that grounds existed to terminate Respondent's parental rights. There was ample evidence in the record to support these findings. However, it is unnecessary to address these findings of fact because they are not relevant to the issue raised by Respondent on appeal. *See In re T.M.*, 180 N.C. App. 539, 547, 638 S.E.2d 236, 240 (2006) (determining that erroneous findings that are unnecessary to support adjudication of neglect do not constitute reversible error). Accordingly, we affirm the trial court's orders terminating Respondent's parental rights.

Conclusion

For the reasons stated above, we affirm.

AFFIRMED.

Judges DILLON and TYSON concur.

Report per Rule 30(e).